IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2152 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAUSHIK CHIMANBHAI PATEL

Versus

UNION OF INDIA

Appearance:

MR TR MISHRA for Petitioner

SERVED BY RPAD - (R) for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/04/2000

ORAL JUDGEMENT

Learned advocate Mr. Mishra has appeared for the petitioner. Learned advocate Mr. Pranav G. Desai has appeared for the respondent bank. None present for the

respondent No. 1.

In this petition, the order passed by the first respondent dated 7th December, 1999 has been challenged by the petitioner. As per the said order, Desk Officer, Government of India, Ministry of Labour has decided not to refer the industrial dispute which has been raised by the petitioner inter alia on the ground that the dispute is not covered by the provisions of the ID Act, 1947. The petitioner is challenging the said order on the ground that the appropriate Government have no power to decide the merits of the industrial dispute while taking decision whether the dispute is required to bereferred to or not. Learned advocate Mr.Mishra has pointed out that the appropriate Government is having no power to enter into the merits of the dispute.He has relied upon the decision of the apex court in caseof Telco Convoy Drivers Mazdoor Sangh and others versus State of Bihar and others reported in AIR 1989 SC 1565 and has submitted that while exercising the power under section 10(1) of the Act,the function of the appropriate government is an administrative function and not the judicial function or a quasi judicial function and, therefore, the respondent no.1 is not justified in passing the impugned order. In the case of Telco (supra), the apex court has taken view that the appropriate government have no power to adjudicate the merits of the dispute which has been raised by the union. In the case before hand, the appropriate Government has taken decision not to refer the industrial dispute on the ground that the petitioner is not the workman within the definition under the ID Act, 1947. This is clearly a decision onmerits. Therefore, the appropriate Government, respondent No. 1 is not justified in passing such an order. No reasons have been given in support of such a conclusion. I am, therefore, of the opinion that the respondent No. 1 has given decision onmerits which is not permissible in law and, therefore, the order impugned herein is required to be quashed and set aside by directing the respondent no.1 to reconsider the demand raised by the petitioner challenging the terminationof service of the petitioner and to consider the decision of the apex court in case of Telco (supra) and pass appropriate order in accordance with law by keeping in view the principles laid down by the apex court in case of Telco (supra). Accordingly, the impugned order dated 7.12.1999 is quashed and set aside. Respondent No. 1 is directed to reconsider the demand raised by the petitioner challenging termination of service of the petitioner and to consider the decision of the apex court in case of Telco (supra) and pass appropriate order in accordance with law by keeping in

view the principles laid down by the apex court in case of Telco (supra) and to pass order to refer the matter for adjudicationto the appropriate forum under the ID Act,1947within eight weeks from the date of receiptof writ of this court. Present petition is, thus, allowed. Rule is made absolute to the above extent with no order as to costs.

25.4.2000. (H.K.Rathod,J.)

Vyas